

AMENDED IN SENATE SEPTEMBER 8, 2003

AMENDED IN SENATE AUGUST 18, 2003

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AMENDED IN ASSEMBLY MAY 20, 2003

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AMENDED IN ASSEMBLY MARCH 28, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

## ASSEMBLY BILL

**No. 746**

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**Introduced by Assembly Member Matthews**  
**(Principal coauthor: Assembly Member Nakanishi)**  
**(Principal coauthor: Senator Figueroa)**  
**(Coauthors: Assembly Members Aghazarian and Chu)**

February 19, 2003

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An act to amend Section 810 of the Business and Professions Code, and to repeal Section 14105.19 of the Welfare and Institutions Code, relating to the healing arts.

### LEGISLATIVE COUNSEL'S DIGEST

AB 746, as amended, Matthews. Fraud: healing arts: revocation of professional licenses.

(1) Existing law establishes the Department of Consumer Affairs that is comprised of various boards that license and regulate the profession under the board's jurisdiction. Existing law, by initiative

statute, creates the Osteopathic Board of California and the State Board of Chiropractic Examiners with similar licensing and regulatory duties with respect to those professions.

Existing law authorizes a board to suspend or revoke a license if the licensee has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

Existing law provides for the Medi-Cal program, pursuant to which health care benefits are provided to public assistance recipients and certain other low-income persons, including dental benefits under the Denti-Cal element of the Medi-Cal program. Under existing law, the Director of Health Services is required to suspend the participation in the Medi-Cal program by a provider of services for conviction of any felony or any misdemeanor involving fraud.

This bill would require specified boards within the department, the Osteopathic Medical Board of California, and the State Board of Chiropractic Examiners to convene disciplinary hearings to revoke a license if the licensee has more than one conviction, as defined, for any felony involving Medi-Cal fraud committed by the licensee in conjunction with the Medi-Cal program or the Denti-Cal element of the Medi-Cal program, and would require revocation unless there are mitigating circumstances. Conviction of the 2nd felony arising out of separate prosecutions would result in automatic suspension of the license. The bill would apply to a licensee with one or more convictions prior to January 1, 2004, in a specified manner. The bill would additionally require these boards to convene disciplinary hearings to suspend or revoke a license if the licensee has one conviction, as defined, for any of the above activities.

*(2) Existing law requires the Director of Health Services to reduce Medi-Cal provider payments, as specified, as a result of the current budget deficit.*

*This bill would repeal this provision.*

*(3) This bill would incorporate additional changes in Section 810 of the Business and Professions Code proposed by SB 359 that would become operative only if SB 359 and this bill are both enacted and become effective on or before January 1, 2004, and this bill is enacted last.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.



*The people of the State of California do enact as follows:*

SECTION 1. Section 810 of the Business and Professions Code is amended to read:

810. (a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:

(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any false or fraudulent claim.

(b) It shall constitute cause for revocation or suspension of a license or certificate for a health care professional to engage in any conduct prohibited under Section 1871.4 of the Insurance Code or Section 550 of the Penal Code.

(c) (1) It shall constitute cause for automatic suspension of a license or certificate issued pursuant to Chapter 4 (commencing with Section 1600), Chapter 5 (commencing with Section 2000), Chapter 6.6 (commencing with Section 2900), Chapter 7 (commencing with Section 3000), or Chapter 9 (commencing with Section 4000), or pursuant to the Chiropractic Act or the Osteopathic Act, if a licensee or certificate holder has been convicted of any felony involving Medi-Cal fraud committed by the licensee or certificate holder in conjunction with the Medi-Cal program, including the Denti-Cal element of the Medi-Cal program, pursuant to Chapter 7 (commencing with Section 14000), or Chapter 8 (commencing with Section 14200), of Part 3 of Division 9 of the Welfare and Institutions Code. The board shall convene a disciplinary hearing to determine whether or not the license or certificate shall be suspended, revoked, or some other disposition shall be considered, including, but not limited to, revocation with the opportunity to petition for reinstatement, suspension, or other limitations on the license or certificate as the board deems appropriate.

(2) It shall constitute cause for automatic suspension and for revocation of a license or certificate issued pursuant to Chapter 4

1 (commencing with Section 1600), Chapter 5 (commencing with  
2 Section 2000), Chapter 6.6 (commencing with Section 2900),  
3 Chapter 7 (commencing with Section 3000), or Chapter 9  
4 (commencing with Section 4000), or pursuant to the Chiropractic  
5 Act or the Osteopathic Act, if a licensee or certificate holder has  
6 more than one conviction of any felony arising out of separate  
7 prosecutions involving Medi-Cal fraud committed by the licensee  
8 or certificate holder in conjunction with the Medi-Cal program,  
9 including the Denti-Cal element of the Medi-Cal program  
10 pursuant to Chapter 7 (commencing with Section 14000), or  
11 chapter 8 (commencing with Section 14200), of Part 3 of Division  
12 9 of the Welfare and Institutions Code. The board shall convene a  
13 disciplinary hearing to revoke the license or certificate and an  
14 order of revocation shall be issued unless the board finds  
15 mitigating circumstances to order some other disposition.

16 (3) It is the intent of the Legislature that paragraph (2) apply to  
17 a licensee or certificate holder who has one or more convictions  
18 prior to January 1, 2004, as provided in this subdivision.

19 (4) Nothing in this subdivision shall preclude a board from  
20 suspending or revoking a license or certificate pursuant to any  
21 other provision of law.

22 (5) "Board," as used in this subdivision, means the Dental  
23 Board of California, the Medical Board of California, the Board  
24 of Psychology, the State Board of Optometry, the California State  
25 Board of Pharmacy, the Osteopathic Medical Board of California,  
26 and the State Board of Chiropractic Examiners.

27 (6) "More than one conviction," as used in this subdivision,  
28 means that the licensee or certificate holder has one or more  
29 convictions prior to January 1, 2004, and at least one conviction  
30 on or after that date, or the licensee or certificate holder has two  
31 or more convictions on or after January 1, 2004. However, a  
32 licensee or certificate holder who has one or more convictions  
33 prior to January 1, 2004, but who has no convictions and is  
34 currently licensed or holds a certificate after that date, does not  
35 have "more than one conviction" for the purposes of this  
36 subdivision.

37 (d) As used in this section, health care professional means any  
38 person licensed or certified pursuant to this division, or licensed  
39 pursuant to the Osteopathic Initiative Act, or the Chiropractic  
40 Initiative Act.



1     *SEC. 1.5. Section 810 of the Business and Professions Code*  
2     *is amended to read:*

3     810. (a) It shall constitute unprofessional conduct and  
4     grounds for disciplinary action, including suspension or  
5     revocation of a license or certificate, for a health care professional  
6     to do any of the following in connection with his or her  
7     professional activities:

8     (1) Knowingly present or cause to be presented any false or  
9     fraudulent claim for the payment of a loss under a contract of  
10    insurance.

11    (2) Knowingly prepare, make, or subscribe any writing, with  
12    intent to present or use the same, or to allow it to be presented or  
13    used in support of any false or fraudulent claim.

14    (b) It shall constitute cause for revocation or suspension of a  
15    license or certificate for a health care professional to engage in any  
16    conduct prohibited under Section 1871.4 of the Insurance Code or  
17    Section 550 of the Penal Code.

18    (c) *(1) It shall constitute cause for automatic suspension of a*  
19    *license or certificate issued pursuant to Chapter 4 (commencing*  
20    *with Section 1600), Chapter 5 (commencing with Section 2000),*  
21    *Chapter 6.6 (commencing with Section 2900), Chapter 7*  
22    *(commencing with Section 3000), or Chapter 9 (commencing with*  
23    *Section 4000), or pursuant to the Chiropractic Act or the*  
24    *Osteopathic Act, if a licensee or certificate holder has been*  
25    *convicted of any felony involving fraud committed by the licensee*  
26    *or certificate holder in conjunction with providing benefits*  
27    *covered by worker's compensation insurance, or has been*  
28    *convicted of any felony involving Medi-Cal fraud committed by the*  
29    *licensee or certificate holder in conjunction with the Medi-Cal*  
30    *program, including the Denti-Cal element of the Medi-Cal*  
31    *program, pursuant to Chapter 7 (commencing with Section*  
32    *14000), or Chapter 8 (commencing with Section 14200), of Part*  
33    *3 of Division 9 of the Welfare and Institutions Code. The board*  
34    *shall convene a disciplinary hearing to determine whether or not*  
35    *the license or certificate shall be suspended, revoked, or some*  
36    *other disposition shall be considered, including, but not limited to,*  
37    *revocation with the opportunity to petition for reinstatement,*  
38    *suspension, or other limitations on the license or certificate as the*  
39    *board deems appropriate.*

(2) *It shall constitute cause for automatic suspension and for revocation of a license or certificate issued pursuant to Chapter 4 (commencing with Section 1600), Chapter 5 (commencing with Section 2000), Chapter 6.6 (commencing with Section 2900), Chapter 7 (commencing with Section 3000), or Chapter 9 (commencing with Section 4000), or pursuant to the Chiropractic Act or the Osteopathic Act, if a licensee or certificate holder has more than one conviction of any felony arising out of separate prosecutions involving fraud committed by the licensee or certificate holder in conjunction with providing benefits covered by worker's compensation insurance, or in conjunction with the Medi-Cal program, including the Denti-Cal element of the Medi-Cal program pursuant to Chapter 7 (commencing with Section 14000), or Chapter 8 (commencing with Section 14200), of Part 3 of Division 9 of the Welfare and Institutions Code. The board shall convene a disciplinary hearing to revoke the license or certificate and an order of revocation shall be issued unless the board finds mitigating circumstances to order some other disposition.*

(3) *It is the intent of the Legislature that paragraph (2) apply to a licensee or certificate holder who has one or more convictions prior to January 1, 2004, as provided in this subdivision.*

(4) *Nothing in this subdivision shall preclude a board from suspending or revoking a license or certificate pursuant to any other provision of law.*

(5) *"Board," as used in this subdivision, means the Dental Board of California, the Medical Board of California, the Board of Psychology, the State Board of Optometry, the California State Board of Pharmacy, the Osteopathic Medical Board of California, and the State Board of Chiropractic Examiners.*

(6) *"More than one conviction," as used in this subdivision, means that the licensee or certificate holder has one or more convictions prior to January 1, 2004, and at least one conviction on or after that date, or the licensee or certificate holder has two or more convictions on or after January 1, 2004. However, a licensee or certificate holder who has one or more convictions prior to January 1, 2004, but who has no convictions and is currently licensed or holds a certificate after that date, does not have "more than one conviction" for the purposes of this subdivision.*

(d) As used in this section, health care professional means any person licensed or certified pursuant to this division, or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act.

SEC. 2. Section 14105.19 of the Welfare and Institutions Code is repealed.

~~14105.19. (a) Due to the significant state budget deficit projected for the 2003-04 fiscal year, and in order to implement changes in the level of funding for health care services, the Director of Health Services shall reduce provider payments as specified in this section.~~

~~(b) (1) Payments shall be reduced by 5 percent for Medi-Cal program services for dates of service on and after January 1, 2004.~~

~~(2) Payments shall be reduced by 5 percent for non-Medi-Cal programs described in Section 14105.18, for dates of service on and after January 1, 2004.~~

~~(3) The payments made to managed health care plans shall be reduced by the actuarial equivalent amount of 5 percent at the time of the plan's next rate determination.~~

~~(4) Reductions to payments for durable medical equipment shall be made at the discretion of the director. If any reduction is made pursuant to this paragraph, the reduction may not exceed 5 percent.~~

~~(e) The services listed below shall be exempt from the payment reductions specified in subdivision (b):~~

~~(1) Acute hospital inpatient services.~~

~~(2) Federally qualified health clinic services.~~

~~(3) Rural health clinic services.~~

~~(4) Outpatient services billed by a hospital.~~

~~(5) Payments to state hospitals or developmental centers.~~

~~(6) Payments to long-term care facilities as defined by the department, including, but not limited to, freestanding nursing facilities, distinct-part nursing facilities, intermediate care facilities for developmentally disabled individuals, subacute care units of skilled nursing facilities, rural swing beds, ventilator weaning services, special treatment program services, adult day health care centers, and hospice room and board services.~~

~~(7) Clinical laboratory or laboratory services as defined in Section 51137.2 of Title 22 of the California Code of Regulations.~~



~~(8) Contract services as designated by the Director of Health Services pursuant to subdivision (e).~~

~~(9) Supplemental reimbursement provided pursuant to Sections 14105.27, 14105.95, and 14105.96.~~

~~(d) Subject to the exception for services listed in subdivision (e), the payment reductions required by subdivision (b) shall apply to the services rendered by any provider who may be authorized to bill for the service, including, but not limited to, physicians, podiatrists, nurse practitioners, certified nurse midwives, nurse anesthetists, and organized outpatient clinics.~~

~~(e) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement this section by means of provider bulletin, or similar instruction, without taking regulatory action.~~

~~(f) The department shall promptly seek all necessary federal approvals in order to implement this section, including necessary amendments to the state plan.~~

~~(g) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.~~

*SEC. 3. Section 1.5 of this bill incorporates amendments to Section 810 of the Business and Professions Code proposed by both this bill and SB 359. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 810 of the Business and Professions Code, and (3) this bill is enacted after SB 359, in which case Section 1 of this bill shall not become operative.*

*SEC. 4. Upon enactment of this act, significant savings will accrue to the Medi-Cal program due to the expanded capacity to remove fraudulent providers from the program. These savings provided by amending Section 810 of the Business and Professions Code, would offset the funds needed to maintain Medi-Cal provider reimbursement rates at there current levels and therefore justify the repeal of Section 14105.19 of the Welfare and Institutions Code, as added by Chapter 230 of the Statutes of 2003.*